IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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Review W.P.M.P (SR) No.166975 of 2013 in W.P.No.11681 of 2000 &
W.P.No.22184 of 2009

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Date: 21.8.2014

Between

The Bagh Amberpet Welfare Society (Regd.No.599/81),
Bathkammakunta, Shivam Road, Bagh Amberpet,
Hyderabad and others.

Petitioners

And

State of A.P., rep. by its Secretary,
Municipal Administration, Secretariat Buildings,
Hyderabad and others.

Respondents

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Vs.

$ State of A.P., rep. by its Secretary,
Municipal Administration, Secretariat Buildings,
Hyderabad and others.

Respondents

! Counsel for the Petitioners: Sri VEDULA SRINIVAS

Counsel for the Respondents 12 to 14 : Sri P.SRI RAM

Counsel for Respondents 16 to 19 : G.P. for Land Acquisition

< Gist:

> Head Note:

? Cases referred:

1. (2006) 7 SCC 416
2. (2005) 6 SCC 149

3. AIR 1994 SC 853
4. (2002) 4 SCC 388
5. (2000) 1 SCC 533

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

Review W.P.M.P (SR) No.166975 of 2013 in W.P.No.11681 of 2000 &
W.P.No.22184 of 2009

COMMON ORDER:

Since the subject matter in Review in W.P.No.11681 of 2000 and W.P.No.22184 of 2009 is the same and the issues are inter-related, this Court deems it appropriate to dispose of these two cases by way of this common order.

2. The facts and circumstances, leading to the filing of the review petition in W.P.No.11681 of 2000 are as follows:

2.1 Respondents 1 to 4 in the review who are no more now filed W.P.No.11681 of 2000, seeking to declare the land acquisition proceedings initiated vide draft notification and draft declaration dated 4.6.1975 and 25.5.1978 issued under Sections 4(1) and 6 of the Land Acquisition Act, 1894 as lapsed to the extent of the land, admeasuring Ac.1.22 guntas situated in S.Nos.572 (Ac.0.07 gts.), 611 (0.21 gts.) and 612 (0.34 gts.) of Bagh Amberpet village, Hyderabad.

2.2 This Court, by way of an order dated 13.8.2007, allowed the said writ petition and the operative portion of the said order reads as under:

> "Hence, this Court is of the view that the Notification dated 5.6.1975 issued under Section 4(1) of the Act insofar as the lands of the petitioners are concerned is hereby quashed. If the respondents so chose, they may issue a fresh Notification under Section 4(1) of the Act, complete the entire land acquisition proceedings and pay compensation to the petitioners as fixed by the Land Acquisition Officer, otherwise, the lands shall be re-delivered to the petitioners. This exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order".

2.3 Seeking review of the above said order, the present review application under Order 47 Rule 1 read with Section 114 CPC has been filed, raising a number of grounds. Resisting the review, a counter affidavit has been filed by the Respondents 12, 13 and 14 who are the legal representatives of the deceased 3rd petitioner in W.P.No.11681 of 2000.

3. Coming to W.P.No.22184 of 2009, it is a writ petition filed by the review petitioners in W.P.No.11681 of 2000, questioning the proceedings of the Additional Commissioner (Estates), GHMC, Hyderabad bearing LR.No.63/EO/E1/GHMC/2009 dated 19.6.2009 issued obviously as a consequence of the orders of this Court in W.P.No.11681 of 2000 dated 13.8.2007 which are the subject matter of the review now. This court, while issuing rule nisi, on 15.10.2009 in W.P.M.P.No.28807 of 2009 granted order of status quo with respect to the possession of the parties. Responding to the rule nisi issued by this Court, a counter affidavit dated 13.4.2011 is filed on behalf of Respondents 2 and 3/GHMC. A reply dated 12.7.2011 is also filed by the petitioners in W.P.No.22184 of 2009.

4. Contentions of Sri Vedula Srinivas, learned counsel for review petitioners in W.P.No.11681 of 2000 and petitioners in W.P.No.22184 of 2009

4.1 W.P.No.11681 of 2000 was filed by the petitioners therein by suppressing the facts and by making wrong submissions before this Court and the said writ petition was decided on the basis of the assertions made by the writ petitioners in W.P.No.11681 of 2000 and this Court was kept in dark regarding the facts pertaining to the land acquisition by the GHMC under G.O.Rt.No.68 dated 4.6.1975.

4.2 The entire land acquisition proceedings, relating to construction of housing project by HUDCO was eventually upheld by the Hon'ble Apex Court and the petitioners in W.P.No.11681 of 2000 are estopped

from questioning the said proceedings and the land acquisition proceedings initiated vide draft notification dated 4.6.1975 was questioned after a lapse of 25 years and the said delay was not properly explained by the petitioners in W.P.No.11681 of 2000.

4.3 This Court failed to take note of the issues concluded before the Hon'ble Supreme Court, which resulted in miscarriage of justice.

4.4 This Court was not apprised of the facts that the entire land under acquisition had been made into plots and the same had been allotted to the beneficiaries and the possession had also been delivered.

4.5 The petitioners in W.P.No.11681 of 2000 did not intentionally implead the review petitioners in the said writ petition.

4.6 There was no inordinate delay in passing of the award and the matter was pending before the Courts for more than two decades.

4.7 This Court was kept in dark about the representation submitted by the petitioners in W.P.No.11681 of 2000 dated 20.10.1999 addressed to the Principal Secretary to Government, Housing and Municipal Administration Department, saying that their land admeasuring Ac.1.22 gts. also forms part of the land in respect of which the Hon'ble Supreme Court passed orders on 14.9.1999.

5. To bolster his submissions, the learned counsel for the review petitioners and the petitioners in W.P.No.22184 of 2009 places reliance on the judgments of the Hon'ble Supreme Court in **Hamza Haji v. State of Kerala**[1], **State of A.P. v. T.Suryachandra Rao**[2] and **S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs.**[3].

6. Contentions of Sri P.Sri Raghuram, learned senior counsel

6.1. W.P.No.22184 of 2009 is not maintainable as the petitioners therein, by way of amendment in W.P.M.P.No.3495 of 2013, are seeking to assail the earlier orders of this Court in W.P.No.11681 of 2000 dated 13.8.2007 and this Court has no jurisdiction to set aside the said earlier orders.

6.2. There is absolutely no fraud as alleged by the review petitioners nor it is a case of suppression of any information and in fact the subject land is not a part of the entire extent.

6.3. There is no estoppel against the title and the representation dated 20.10.1999 made is of no consequence nor has any impact on the adjudication of the present issue before this Court.

6.4. The award in the instant case is manipulated.

6.5. The review earlier filed by the Government vide W.P.M.P.No.29679 of 2007 was dismissed and the present review is a typical example of abuse of process of law.

6.6. In support of his case, the learned senior counsel places reliance on the judgments of the Hon'ble Supreme Court in **Rupa Ashok Hurra v. Ashok Hurra & another**[4].

7. Contentions of Sri R.Radhakrishna Reddy, learned Standing Counsel for GHMC.

7.1 The very basis for issuing the impugned notice in W.P.No.22184 of 2009 is the order passed by this Court in W.P.No.11681 of 2000 and the GHMC is strictly adhering to the directions of this Court.

8. In the light of the respective pleadings, contentions and submissions, now the questions which boil down for consideration of this Court are;

(i) Whether the review petitioners herein have made out a case, warranting any interference of this

Court under the provisions of Order 47 Rule 1 read with Section 114 of CPC ?

(ii) Whether the review application is maintainable ?

(iii) Whether the review petitioners/petitioners in W.P.No.22184 of 2009 are entitled for any relief from this Court ?

9. The material available on record reveals that the State Government pressed into service the provisions of Land Acquisition Act, 1894 (hereinafter called 'the Act') and issued a draft notification under sub-Section (1) of Section 4 of the Act vide G.O.Rt.No.68 Health, Housing and Municipal Administration Department dated 4.6.1975 for the purpose of acquiring a total extent of Ac.21.00 gts. situated in Sy.Nos.567/1, 567/2, 615, 561, 563, 560, 564, 566, 568, 569, 570/1, 571, 572, 611, 612, 613, 614 and 578 of Bagh Amberpet village, Hyderabad for housing project under HUDCO scheme at the instance of Municipal Corporation of Hyderabad. Thereafter, the State Government issued a draft declaration under Section 6 of the Act for an extent of Ac.20-33 gts. vide G.O.Rt.No.41, Housing, Municipal Administration and Urban Development Department dated 25.4.1978. The review petitioners society which came into being on 15.4.1981 paid a sum of Rs.40,20,649/- to the MCH towards the cost of the land of Ac.20.33 gts. under acquisition. One Tulasi Cooperative Society in whose favour an agreement of sale was said to have been executed by the original owner Sri Syed Azam and Sri Syed Azam himself filed W.P.Nos.4485 & 5360 of 1981 before this Court questioning the proceedings initiated under the provisions of the Land Acquisition Act. In W.P.No.4455 of 1981, the review petitioner herein was arrayed as Respondent No.3 and by virtue of judgment dated 28.1.1982, the said cases were dismissed by this Court holding the proceedings as valid. As against the said judgment, W.A.Nos.170 and 171 of 1982 were filed and the same were allowed by a Full Bench of this Court on 2.3.1983, quashing the draft notification and draft declaration. As against the same, Civil Appeal Nos.5784-85 of 1983 were filed by the petitioners and in the meanwhile the State Government, vide G.O.Ms.No.946 dated 23.6.1983, cancelled the exemption granted earlier in favour of Syed Azam vide G.O.Ms.No.4293 dated 11.9.1980 under Section 20(1)(a) of the Urban Land Ceiling Act, 1976. W.P.No.5498 of 1983 filed by Syed Azam against the said order was dismissed on 30.6.1988 on the ground of pendency of above Civil Appeals before the Hon'ble Supreme Court. Subsequently, S.L.P (Civil) No.1679 of 1989 was filed against the said order before the Hon'ble Apex Court and W.P.No.6500 of 1983 before this Court was also transferred to the Supreme Court and an order was passed by the Hon'ble Supreme Court on 17.8.1990, remanding the matters back to this Court and after remand, this Court passed orders dismissing W.A.Nos.170 and 171 of 1982 and disposing of W.P.Nos.6500 and 5498 of 1983 vide orders dated 21.11.1992 and the operative portion of the said orders reads as under:

"1. The land acquisition proceedings covered by the Section 4(1) notification issued in G.O.Rt.No.68 dated 4.6.1975 in respect of Ac.18-03 guntas of land shall revive and be completed as expeditiously as possible preferably within three months from today, the beneficiaries being the 374 members of the Bagh Amberpet Welfare Association who have already remitted a total sum of Rs.40,20,649.04.

2. The compensation amount the land owners are entitled to, shall be limited only to Rs.25,49,131.75 and nothing more.

3. M/s Tulsi Cooperative Housing Society is at liberty to work out its rights vis-à-vis the land owners.

4. The applications filed under Section 20 of the ULC Act seeking exemptions from the operation of the Act and now pending with the Government since 1976 shall be dispose dof as indicated supra.

The two statements containing the details about the payment of compensation under the L.A. Act and the ULC Act enclosed to the Government Memorandum No.1472/UC.II/1(1)/83-12 dated 16.10.1992 addressed to the Government Pleader shall form part of the record".

10. The above said orders were challenged by Tulsi Cooperative Housing Society and Syed Azam before the Hon'ble Supreme Court in Civil Appeal Nos.6986-87 of 1994, 6988-91 of 1994 and 6992-93 of 1994 and the same were disposed of by the Hon'ble Supreme Court vide judgment dated 14.9.1999, reported in **Tulsi Cooperative Housing Society, Hyderabad and others v. State of A.P. and others**[5] and the operative portion of the said judgment at paragraph 27 reads as follows:

"(I) The directions contained in the judgment of the High Court are set aside;

(II) The land acquisition proceedings covered by the Notification under Section 4(1) of the Acquisition Act issued in G.O. Rt. No. 68 dated 4.6.75 in respect of 18 acres 03 guntas of land stand revived and shall be

completed as expeditiously as possible within a period of three months from today;

(III) The concerned authorities constituted under Acquisition Act shall decide the compensation payable to the land owner in accordance with the provisions of the Act.;

(IV) The Government shall nominate a Committee comprising at least three Secretaries to the Government for distributing the acquired land equitably among deserving persons in order to carry out the purposes of the acquisition and to balance the equities between various persons whether they belong to one or the other society or are not members of either society.;

(V) M/s. Tulsi Cooperative Housing Society is at liberty to work out its rights as against the land owner in appropriate proceedings;

(VI) Applications under Section 20 of the Ceiling Act seeking exemption from the operation of the Act said to be pending with the Government since 1976 shall be disposed of in accordance with law as expeditiously as possible and preferably within a period of three months from today."

11. Thereafter, the Special Deputy Collector, Land Acquisition, MCH passed an award vide proceedings A2/452/79 dated 22.6.2000, referring the matter under Sections 30 and 31(2) of the Land Acquisition Act to the City Civil Court, Hyderabad for determination of title and payment of the awarded amount to the rightful owners. A perusal of the award placed before this Court, in clear and unequivocal terms, discloses the participation of the petitioners in W.P.No.11681 of 2000 during award proceedings. The said reference was numbered as L.A.O.P.No.19 of 2000 on the file of the Court of the I Senior Civil Judge, City Civil Court, Hyderabad. The petitioners in W.P.No.11681 of 2000 figured as Claimant Nos.25, 19, 14 and 15 respectively and the Claimant Nos.3, 6, 11, 12, 13, 16 and 17 contested the said L.A.O.P.No.19 of 2000 and Claimant No.25 was the legal representative of Claimant No.11 who is petitioner No.1 in W.P.No.11681 of 2000. Eventually, by way of order dated 23.10.2007, the said L.A.O.P.No.19 of 2000 was dismissed on the ground that the claimants failed to prove their title to the property. Unfortunately, in the affidavit filed in support of W.P.No.11681 of 2000, these particulars were not mentioned, which obviously resulted in passing the order under review.

12. Another significant aspect, which needs mention at this juncture is that on 20.10.1999 the petitioners in W.P.No.11681 of 2000 submitted a representation to the State Government and the last paragraph of the said representation reads as under:

> "We, therefore pray the Government kindly to restrict the L.A. proceedings to extent of Acres 16.28 belonging to Syed Azam and others leaving our land admeasuring Acres 1.30 so that we the small farmers and poor citizens can make a living as we have no other source and to meet the ends of justice if necessary by filing an affidavit before the Supreme Court of India, for amending the order of Supreme court of India, at 2nd instruction at page 24, for deleting our land admeasuring to an extent of Acres 1.30 guntas out of Acres 18.03 guntas, since the matter is sub-judice".

13. The above said aspect also speaks volumes with regard to conduct and bonafides on the part of the petitioners in W.P.No.11681 of 2000. The above narration manifestly and categorically demonstrates that even before institution of W.P.No.11681 of 2000, the entire proceedings, including passing of award and the orders in L.A.O.P.No.19 of 2000 attained finality. Absolutely there is no plausible explanation forthcoming as to why these material particulars were not furnished in the affidavit filed in support of W.P.No.11681 of 2000.

14. At this juncture, it may be appropriate to refer to the judgments relied upon by the learned counsel for review petitioners in W.P.No.11681 of 2000 and petitioners in W.P.No.22184 of 2009.

14.1 In *Hamza Haji v. State of Kerala* (1 supra), the Hon'ble Supreme Court at paragraphs 9 to 29 held as follows:

> **"9.** It is contended on behalf of the appellant that the High Court had far exceeded its jurisdiction and has acted illegally in setting aside the order of the Forest Tribunal which had become final long back and which had been given effect to, that too, by the intervention of the High Court. It is submitted that the High Court had no jurisdiction or authority to set at naught the two earlier orders of Division Benches of coequal strength and that too at this belated stage and thus the order suffered from patent illegality. On facts it was contended that the finding that the order was procured by the appellant by playing a fraud on the Tribunal was not justified and no occasion arose for the High Court to exercise its jurisdiction under Article 215 of the Constitution of India, assuming it had such a jurisdiction to interfere with the earlier orders. On behalf of the State it is contended by the learned Senior Counsel that fraud vitiates everything, that if an order is vitiated by fraud, it does not attain finality and it can be set at naught by a proper proceeding and on the facts and in the

circumstances of the case, the High Court was fully justified in setting aside the order of the Forest Tribunal. It is submitted that the High Court has only followed the ratio of the decisions of this Court and there is nothing illegal in the decision rendered by the High Court. On facts, fraud was writ large and this was a case where the High Court ought to have interfered and the interference made was fully justified. Counsel further submitted that since the appellant had come with unclean hands and had obtained a relief by playing a fraud on the Court, this was a fit case where this Court should decline to exercise its discretionary jurisdiction under Article 136 of the Constitution of India, sought to be invoked by the appellant. It was submitted that the appeal deserved to be dismissed.

10. It is true, as observed by De Grey, C.J., in *R.* v. *Duchess of Kingston*[1] that:

" 'Fraud' is an extrinsic, collateral act, which vitiates the most solemn proceedings of courts of justice. Lord Coke says it avoids all judicial acts, ecclesiastical and temporal."

11. In *Kerr on Fraud and Mistake*, it is stated that:

"In applying this rule, it matters not whether the judgment impugned has been pronounced by an inferior or by the highest court of judicature in the realm, but in all cases alike it is competent for every court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud."

12. It is also clear as indicated in *Kinch* v. *Walcott*[2] that it would be in the power of a party to a decree vitiated by fraud to apply directly to the court which pronounced it to vacate it. According to Kerr:

"In order to sustain an action to impeach a judgment, actual fraud must be shown; mere constructive fraud is not, at all events after long delay, sufficient … but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

(*See* 7th Edn., pp. 416-17)

13. In *Corpus Juris Secundum*, Vol. 49, para 265, it is acknowledged that:

"Courts of record or of general jurisdiction have inherent power to vacate or set aside their own judgments."

In para 269, it is further stated:

"Fraud or collusion in obtaining judgment is a sufficient ground for opening or vacating it, even after the term at which it was rendered, provided the fraud was extrinsic and collateral to the matter tried and not a matter actually or potentially in issue in the action."

It is also stated:

"Fraud practised on the court is always ground for vacating the judgment, as where the court is deceived or misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair."

14. In *American Jurisprudence*, 2nd Edn., Vol. 46, para 825, it is stated:

"Indeed, the connection of fraud with a judgment constitutes one of the chief causes for interference by a court of equity with the operation of a judgment. The power of courts of equity in granting such relief is inherent, and frequent applications for equitable relief against judgments on this ground were made in equity before the practice of awarding new trials was introduced into the courts of common law.

Where fraud is involved, it has been held, in some cases, that a remedy at law by appeal, error, or certiorari does not preclude relief in equity from the judgment. Nor, it has been said, is there any reason why a judgment obtained by fraud cannot be the subject of a direct attack by an action in equity even though the judgment has been satisfied."

15. The law in India is not different. Section 44 of the Evidence Act enables a party otherwise bound by a previous adjudication to show that it was not final or binding because it is vitiated by fraud. The provision therefore gives jurisdiction and authority to a court to consider and decide the question whether a prior adjudication is vitiated by fraud. In *Paranjpe* v. *Kanade*[3] it was held that: (ILR p. 148)

"It is always competent to any court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud;"

16. In *Lakshmi Charan Saha* v. *Nur Ali*[4] it was held that: (ILR p. 936)

"[T]he jurisdiction of the Court in trying a suit [questioning the earlier decision as being vitiated by fraud,] was not limited to an investigation merely as to whether the plaintiff was prevented from placing his case properly at the prior trial by the fraud of the defendant. The Court could and must rip up the whole matter for determining whether there had been fraud in the procurement of the decree."

17. In *Manindra Nath Mittra* v. *Hari Monda*[5] the Court explained the elements to be proved before a plea of a prior decision being vitiated by fraud could be upheld. The Court said: (AIR p. 127)

"With respect to the question as to what constitutes fraud for which a decree can be set aside, two propositions appear to be well established. The first is that although it is not permitted to show that the Court (in the former suit) was mistaken, it may be shown that it was misled, in other words, where the Court has been intentionally misled by the fraud of a party and a fraud has been committed upon the Court with the intention to procure its judgment, it will vitiate its judgment. The second is that a decree cannot be set aside merely on the ground that it has been procured by perjured evidence:"

18. The position was reiterated by the same High Court in *Esmile Uddin Biswas* v. *Shajoran Nessa Bewa*[6]. It was held that: (AIR p. 650)

"[I]t must be shown that the fraud was practised in relation to the proceedings in Court and the decree must be shown to have been procured by practising fraud of some sort, upon the Court:"

19. In *Nemchand Tantia* v. *Kishinchand Chellaram (India) Ltd.*[7] it was held that: (CWN p. 740)

"A decree can be reopened by a new action when the court passing it had been misled by fraud, but it cannot be reopened when the court is simply mistaken; when the decree was passed by relying on perjured

evidence, it cannot be said that the court was misled."

20. It is not necessary to multiply authorities on this question since the matter has come up for consideration before this Court on earlier occasions. In *S.P. Chengalvaraya Naidu* v. *Jagannath*[8] this Court stated that: (SCC p. 2, para 1)

"It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of the law. Such a judgment/decree—by the first court or by the highest court—has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

The Court went on to observe that the High Court in that case was totally in error when it stated that there was no legal duty cast upon the plaintiff to come to the court with a true case and prove it by true evidence. Their Lordships stated: (SCC p. 5, para 5)

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

21. In *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education*[9] this Court after quoting the relevant passage from *Lazarus Estates Ltd.* v. *Beasley*[10] and after referring to *S.P. Chengalvaraya Naidu* v. *Jagannath*[8] reiterated that fraud avoids all judicial acts. In *State of A.P.* v. *T. Suryachandra Rao*[11] this Court after referring to the earlier decisions held that suppression of a material document could also amount to a fraud on the Court. It also quoted (at SCC p. 155, para 16) the observations of Lord Denning in *Lazarus Estates Ltd.* v. *Beasley*[10] that: (All ER p. 345 C)

"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

22. According to *Story's Equity Jurisprudence*, 14th Edn., Vol. 1, para 263:

"Fraud indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another."

23. In *Patch* v. *Ward*[12] Sir John Rolt, L.J. held that:

"Fraud must be actual positive fraud, a meditated and intentional contrivance to keep the parties and the court in ignorance of the real facts of the case, and obtaining that decree by that contrivance."

24. This Court in *Bhaurao Dagdu Paralkar* v. *State of Maharashtra*[13] held that: (SCC p. 607)

"Suppression of a material document would also amount to a fraud on the court. Although, negligence is not fraud but it can be evidence on fraud."

25. Thus, it appears to be clear that if the earlier order from the Forest Tribunal has been obtained by the appellant on perjured evidence, that by itself would not enable the Court in exercise of its power of certiorari or of review or under Article 215 of the Constitution of India, to set at naught the earlier order. But if the court finds that the appellant had founded his case before the Forest Tribunal on a false plea or on a claim which he knew to be false and suppressed documents or transactions which had relevance in deciding his claim, the same would amount to fraud. In this case, the appellant had purchased an extent of about 55 acres in the year 1968 under Document No. 2685 of 1968 dated 2-6-1968. He had, even according to his evidence before the Forest Tribunal, gifted 5 acres of land to his brother under a deed dated 30-1-1969. In addition, according to the State, he had sold, out of the extent of 55.25 acres, an extent of 49.93 acres by various sale deeds during the years 1971 and 1972. Though, the details of the sale deeds like the numbers of the registered documents, the dates of sale, the names of the transferees, the extents involved and the considerations received were set out by the State in its application for review before the High Court, except for a general denial, the appellant could not and did not specifically deny the transactions. Same is the case in this Court, where in the counter-affidavit, the details of these transactions have been set out by the State and in the rejoinder filed by the appellant, there is no specific denial of these transactions or of the extents involved in those transactions. Therefore, it stands established without an iota of doubt as found by the High Court, that the appellant suppressed the fact that he had parted with almost the entire property purchased by him under the registered document through which he claimed title to the petition schedule property before the Forest Tribunal. In other words, when he claimed that he had title to 20 acres of land and the same had not vested in the State and in the alternative, he bona fide intended to cultivate the land and was cultivating that land, as a matter of fact, he did not have either title or possession over that land. The Tribunal had found that the land was a private forest and hence has vested under the Act. The Tribunal had granted relief to the appellant only based on Section 3(3) of the Act, which provided that so much extent of private forest held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him and that does not exceed the extent of the ceiling area applicable to him under Section 82 of the Kerala Land Reforms Act, could be exempted. Therefore, unless the appellant had title to the application schedule land and proved that he intended to cultivate that land himself, he would not have been entitled to an order under Section 3(3) of the Act. It is obvious that when he made the claim, the appellant neither had title nor possession over the land. There could not have been any intention on his part to cultivate the land with which he had already parted and of which he had no right to possession. Therefore, the appellant played a fraud on the Court by holding out that he was the title-holder of the application schedule property and he intended to cultivate the same, while procuring the order for exclusion of the application schedule lands. It was not a case of mere perjured evidence. It was suppression of the most vital fact and the founding of a claim on a non-existent fact. It was done knowingly and deliberately, with the intention to deceive. Therefore, the finding of

the High Court in the judgment under appeal that the appellant had procured the earlier order from the Forest Tribunal by playing a fraud on it, stands clearly established. It was not a case of the appellant merely putting forward a false claim or obtaining a judgment based on perjured evidence. This was a case where on a fundamental fact of entitlement to relief, he had deliberately misled the Court by suppressing vital information and putting forward a false claim, false to his knowledge, and a claim which he knew had no basis either in fact or on law. It is therefore clear that the order of the Forest Tribunal was procured by the appellant by playing a fraud and the said order is vitiated by fraud. The fact that the High Court on the earlier occasion declined to interfere either on the ground of delay in approaching it or on the ground that a second review was not maintainable, cannot deter a Court moved in that behalf from declaring the earlier order as vitiated by fraud.

26. The High Court, as a court of record, has exercised its jurisdiction to set at naught the order of the Forest Tribunal thus procured by the appellant by finding that the same is vitiated by fraud. There cannot be any doubt that the Court in exercise of its jurisdiction under Article 215 of the Constitution of India has the power to undo a decision that has been obtained by playing a fraud on the Court. The appellant has invoked our jurisdiction under Article 136 of the Constitution of India. When we find in agreement with the High Court that the order secured by him is vitiated by fraud, it is obvious that this Court should decline to come to his aid by refusing the exercise of its discretionary jurisdiction under Article 136 of the Constitution of India. We do not think that it is necessary to refer to any authority in support of this position except to notice the decision in *Ashok Nagar Welfare Assn.* v. *R.K. Sharma*[14].

27. The order of the Forest Tribunal in the case on hand had merged in the decision in MFA No. 328 of 1981 rendered by the High Court. The governing decision, therefore, was the decision of the High Court. When seeking to question the decision as being vitiated by fraud, the proper course to adopt was to move the court that had rendered the decision, by an application. In a case where an appeal is possible, an appeal could be filed. The House of Lords indicated in *Kinch* v. *Walcott*[2] that it will be in the power of the party to the decision complaining of fraud to apply directly to the court which pronounced the judgment to vacate it. The Full Bench of the Bombay High Court in *Guddappa Chikkappa Kurbar* v. *Balaji Ramji Dange*[15] observed that: (AIR p. 275)

"No court will allow itself to be used as an instrument of fraud, and no court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud."

28. In *Hip Foong Hong* v. *H. Neotia and Co.*[16] the Privy Council held that if a judgment is affected by fraudulent conduct it must be set aside. In *R.* v. *Recorder of Leicester*[17] it was held that a certiorari would lie to quash a judgment on the ground that it has been obtained by fraud. The basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof. In this situation, the High Court in this case, could have clearly either quashed the decision of the Forest Tribunal in OA No. 247 of 1979 or could have set aside its own judgment in MFA No. 328 of 1981 dismissing the appeal from the decision of the Forest Tribunal at the stage of admission and vacated the order of the Forest Tribunal by allowing that appeal or could have exercised its jurisdiction as a court of record by invoking Article 215 of the Constitution to set at naught the decision obtained by the appellant by playing a fraud on the Forest Tribunal. The High Court has chosen to exercise its power as a court of record to nullify a decision procured by the appellant by playing a fraud on the Court. We see no objection to the course adopted by the High Court even assuming that we are inclined to exercise our jurisdiction under Article 136 of the Constitution of India at the behest of the appellant.

29. In the view that we have taken as above, the plea that the second review was not maintainable, that the Division Bench could not have ignored the earlier orders of the High Court dismissing the appeal at the stage of admission and the dismissing of the petition for condonation of delay in filing the first review, are all of no avail to the appellant. In this case, the Forest Tribunal had also been moved by way of review and that Tribunal refused to exercise its jurisdiction under Section 8-B of the Act and nothing stands in the way of the High Court setting aside that order on a finding that the original order from the Forest Tribunal was secured by playing a fraud on the Tribunal. Equally, nothing stood in the way of the High Court reviewing the judgment in OP No. 2926 of 1989 in which a mandamus was issued by the High Court to restore possession of the application schedule property to the appellant. Similarly, nothing stood in the way of the High Court in allowing OP No. 20946 of 1997 filed by a body of citizens challenging the restoration of 20 acres of virgin forest to the appellant in presumed enforcement of the order in OA No. 247 of 1979 and passing the necessary order nullifying the original order. The fact that the High Court has chosen to review the earlier order on the petition for condonation of delay in filing the first review petition and then to exercise the power of review cannot be of any moment in the light of what we have stated. In any event, as we have indicated, this is a fit case where we should clearly decline to exercise our jurisdiction under Article 136 of the Constitution of India to come to the aid of the appellant to secure to him the fruits of the fraud practised by him on the Forest Tribunal and the High Court. Thus, we find no merit in the argument that the High Court had exceeded its jurisdiction in setting aside the order of the Forest Tribunal at this distance of time."

14.2 In State of A.P. v. T.Suryachandra Rao (2 supra), the Hon'ble Supreme Court at paragraphs 8 to 16 held as follows

"8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill-will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any

person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See *Vimla (Dr.)* v. *Delhi Admn.*[1] and *Indian Bank* v. *Satyam Fibres (India) (P) Ltd.*[2]]

9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu* v. *Jagannath*[3].)

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See *Ram Chandra Singh* v. *Savitri Devi*[4].)

11. "Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In *Webster's Third New International Dictionary* "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In *Black's Law Dictionary*, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In *Concise Oxford Dictionary*, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to *Halsbury's Laws of England*, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with the intent to deceive another. From dictionary meaning or even otherwise fraud arises out of a deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with the knowledge that it was false. In a leading English case i.e. *Derry* v. *Peek*[5] what constitutes "fraud" was described thus: (All ER p. 22 B-C)

"[F]raud is proved when it is shown that a false representation has been made (*i*) knowingly, or (*ii*) without belief in its truth, or (*iii*) recklessly, careless whether it be true or false."

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja* v. *Secy. of State for Home Deptt.*[6] that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute.

"'If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.' Present-day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain.' In public law the duty is not to deceive." (See *Shrisht Dhawan* v. *Shaw Bros.*[7] SCC p. 554, para 20.)

12. In that case it was observed as follows: (SCC p. 553, para 20)

"*20.* Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In *Webster's Third New International Dictionary* fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to

another. In *Black's Law Dictionary*, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In *Concise Oxford Dictionary*, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to *Halsbury's Laws of England*, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case *Derry* v. *Peek*[5] what constitutes fraud was described thus: (All ER p. 22 B-C)

'[F]raud is proved when it is shown that a false representation has been made (*i*) knowingly, or (*ii*) without belief in its truth, or (*iii*) recklessly, careless whether it be true or false.' "

13. This aspect of the matter has been considered recently by this Court in *Roshan Deen* v. *Preeti Lal*[8], *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education*[9], *Ram Chandra Singh case*[4] and *Ashok Leyland Ltd.* v. *State of T.N.*[10]

14. Suppression of a material document would also amount to a fraud on the court. (See *Gowrishankar* v. *Joshi Amba Shankar Family Trust*[11] and *S.P. Chengalvaraya Naidu case*[3].

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav case*[9].

16. In *Lazarus Estates Ltd.* v. *Beasley*[12] Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

"No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In the same judgment Lord Parker, L.J. observed that fraud "vitiates all transactions known to the law of however high a degree of solemnity".

14.3 In S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. (3 supra), the Hon'ble Supreme Court at paragraphs 1, 7 and 8 held as follows:

1."Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

15. Therefore, a salutary and sacred responsibility is cast upon the Courts to use the sword of Dharma when

a fraud and misrepresentation and distortion of material realities are brought to the notice of the Court. It is a settled and a well established principle of law that fraud unravels everything and the question of limitation pales into insignificance while dealing with the aspect of suppression of material realities. It is also a settled and well established proportion of law that the persons, approaching the Courts should be with clean hands and without concealing and suppressing any material realities. In the considered opinion of this Court, the petitioners in W.P.No.11681 of 2000 approached this Court by concealing the material realities and suppressing the facts which obviously prompted this Court to pass the order under review. Therefore, the order under review is liable to be reviewed by this Court in view of the above reasons. In the considered opinion of this Court these aspects would undoubtedly constitute errors apparent on the face of record, as such the same obligate this Court to correct the same under the provisions of Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure.

16. The very basis for the GHMC to issue the impugned notice in W.P.No.22184 of 2009 is the order under review. Since this Court is of the considered view that the order under review is liable to be reviewed, the impugned notice in W.P.No.22184 of 2009 is of no consequence and becomes inoperative. In view of these orders, this Court is of the view that no orders need be passed in W.P.M.P.No.3495 of 2013 in W.P.No.22184 of 2009. In view of the principles laid down in the above referred judgments, the contention of the learned senior counsel that the present review is not maintainable in view of the dismissal of the review filed by the official respondents is not at all sustainable and tenable and this Court cannot remain as a silent spectator for the contingencies of this nature.

17. For the aforesaid reasons and having regard to the principles laid down by the Hon'ble Supreme Court in the judgments referred to above, the review petition is allowed and the order passed in W.P.No.11681 of 2000 dated 13.8.2007 stands reviewed and consequently W.P.No.11681 of 2000 is dismissed and W.P.No.22184 of 2009 is disposed of subject to the above observations. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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A.V.SESHA SAI, J

Date: 21.8.2014

Note:

L.R. copy to be marked.

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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[1] (2006) 7 SCC 416
[2] (2005) 6 SCC 149
[3] AIR 1994 SC 853
[4] (2002) 4 SCC 388
[5] (2000) 1 SCC 533